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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: APR 19 2004

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the People's Republic of China (PRC) who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her spouse and U.S. citizen child.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated March 7, 2003.

On appeal, counsel contends that the applicant has established extreme hardship to her spouse and the Immigration and Naturalization Service [now Citizenship and Immigration Services] erred as a matter of law and abused its discretion in denying the Form I-601 waiver. *See* Form I-290B, dated April 7, 2003.

In support of these assertions, counsel submits an affidavit of the applicant; an affidavit of the applicant's spouse; a report from a clinical psychologist, dated August 14, 2002; a copy of the U.S. birth certificate of the applicant's son; copies of the U.S. passports of the father and grandfather of the applicant's spouse; a copy of the business license for the restaurant owned by the family of the applicant's spouse; a letter from a minister, dated July 23, 2002; copies of photographs of the applicant and her family and copies of country condition reports for the PRC. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured entry into the United States on or about February 17, 1998, with a fraudulent passport.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel submits an affidavit of the applicant's husband to support the proposition that the applicant's spouse would suffer extreme hardship if the applicant departed from the United States. *See* Affidavit of Jun An Zhang in Support of Adjustment Application of Xiu Qin Dong. The applicant's husband asserts that he will be unable to manage his family's restaurant in the absence of the applicant because she cares for his father and grandfather while he works. *Id.* The applicant's spouse indicates that his grandfather is blind, however, the applicant's spouse does not state and the record does not demonstrate that the father of the applicant's spouse is unable to care for himself. Further, the record does not demonstrate that the father of the applicant's spouse is unable to provide care for the grandfather and grandmother of the applicant's spouse in the absence of the applicant.

The applicant's spouse contends that he will suffer financially in the absence of the applicant because he will have to take a full-time job in order to place his son in daycare. The AAO notes that the need to work full-time does not rise to the level of extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel submits an affidavit of the applicant to establish that the applicant will be persecuted if she returns to her home country. *See* Affidavit of Xiu Qin Dong in Support of Adjustment of Status Application, dated January 21, 2002. While the applicant's fears are regrettable, the AAO reiterates that hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings under the Act. There are mechanisms under United States immigration law to address the veracity of applicant's fears of persecution in her home country, however Form I-601 waiver proceedings are not the correct forum for their consideration.

Likewise, the report of a clinical psychologist who met with the applicant and her spouse focuses mainly on hardship suffered by the applicant in relation to her inadmissibility to the United States. *See* Psychological Consultation Report prepared by Diane Kern, Licensed Psychologist, dated August 14, 2002. The report indicates that the applicant's spouse will suffer if the applicant departs from the United States, however, it does not document a level of hardship qualifying as "extreme." The AAO notes that the report was compiled

based on one meeting between the evaluating psychologist and the applicant and her spouse. The record does not evidence a continuing professional relationship between either the applicant or her spouse and the psychologist. Further, the record does not establish that the applicant's spouse requires psychological treatment and/or medication.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.